



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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State Controller

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Executive Director

February 27, 2015

Dear Interested Party:

Enclosed is the Second Discussion Paper on Regulation 2002, *Feepayers, Retailers and Low-Volume Retailers*. Before the issue is presented at the Board's May 27, 2015 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, a second interested parties meeting is scheduled as follows:

**March 10, 2015
Room 122 at 10:00 a.m.
450 N Street, Sacramento, CA**

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at Susanne.Buehler@boe.ca.gov by March 25, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member Mr. Michael Patno at 1-916-323-9676, who will be leading the meeting.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB:map

Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers
Ms. Kari Hammond, Board Member's Office, Third District
Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Ms. Yvette Stowers, State Controller's Office
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Mr. Jeffrey L. McGuire (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 46)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Stephen Smith (MIC 82)
Mr. John Thiella (MIC 73)
Mr. Kevin Smith (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Clifford Oakes (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Laureen Simpson (MIC 70)
Ms. Karina Magana (MIC 46)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Ms. Tracy McCrite (MIC 50)
Mr. Michael Patno (MIC 50)

SECOND DISCUSSION PAPER

Proposed Regulation 2002, *Feepayers, Retailers and Low-Volume Retailers*

I. Issue

Whether the Board should approve staff's proposed Regulation 2002, which clarifies Public Resources Code (PRC) §4629.5, as amended by Assembly Bill (AB) 2031 (Stats. 2014. Ch. 810). With the passage of AB 2031, lumber retailers are no longer required to collect and report the Lumber Products Assessment (LPA) if their sales of qualified lumber products are less than \$25,000 in the previous calendar year.

II. Staff Recommendation

Staff proposes Regulation 2002 to clarify PRC §4629.5 as follows:

- Provide definitions of terms that are used throughout the section in order to clarify the amendments enacted by AB 2031.
- Clarify how the sales threshold for a "low-volume retailer" will be computed.
- Identify the responsibilities of a low-volume retailer.

See Exhibit 1 for staff's proposed Regulation 2002, *Feepayers, Retailers and Low-Volume Retailers*.

III. Background

AB 1492 (Chapter 289, statutes 2012) imposed, beginning January 1, 2013, a one-percent assessment on purchasers of qualified lumber products and engineered wood products to be collected by a retailer at the time of sale. As enacted by AB 1492, PRC §4629.5(a)(1) provides:

There is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

With the passage of AB 2031 in September 2014, PRC §4629.5 was amended to exclude certain retailers from the definition of a retailer for the purposes of this section. Excluded retailers are those with annual sales of qualified lumber products of less than \$25,000 during the previous calendar year. These excluded retailers are no longer required to collect and remit the LPA. However, an excluded retailer, who does not collect the LPA, must provide notice to purchasers of qualified lumber products and engineered wood products of their obligation to pay the assessment directly to the Board of Equalization (BOE).

IV. Discussion

Staff's initial discussion paper provided a general overview of the lumber threshold as established by AB 2031. The paper defined the proposed regulation's terms "feepayer," "retailer" and "low-volume retailer" which are used throughout the regulation. It clarified that payment of the LPA to a retailer would relieve the feepayer from the lumber assessment liability. Staff also addressed the responsibilities of the newly defined low-volume retailer.

Low-Volume Retailers Must Provide Notice to Purchasers of Qualified Lumber Products and Engineered Wood Products

SECOND DISCUSSION PAPER

Proposed Regulation 2002, *FeePAYERS, Retailers and Low-Volume Retailers*

At the first interested parties meeting regarding this topic, there was discussion regarding Regulation 2002, subdivision (c) and the requirement of providing notice to feePAYERS (customers) of their obligation to pay the LPA when the low-volume retailer does not collect it. The discussion centered around what information needs to be provided to customers and how that information is provided. Interested parties were concerned with how the low-volume retailers were expected to provide that information to their customers and the cost associated with the notification.

Staff responded that the provision regarding notice only applies if a low-volume retailer decides to no longer collect the lumber products assessment. Suggestions from staff included the placing of signs near the qualified products or at the point of sale, handing out flyers at the point of sale, as well as directing customers to a flyer located on the BOE website that contains information about the lumber products assessment and contact information. ([L-403, Lumber Products Assessment Flyer](#)) Staff requested input from interested parties on ways to provide notice, however, no submissions have been received.

After the meeting, staff met and discussed the inclusion in the proposed regulation of specific requirements for providing notice to customers. It was determined that because AB 2031 simply directs Low-Volume Retailers to provide notice to customers but does not describe how to provide that notice, the inclusion of further notice requirements in the regulation was too restrictive and should be left to the discretion of the low-volume retailers. Thus, no further language regarding notice was added.

Minor Language Revisions

Staff is recommending minor revisions to the original language used in proposed Regulation 2002, to improve the clarity and readability of the regulation.

V. Summary

Staff welcomes any comments, suggestions and input from interested parties regarding the issue. Interested parties are encouraged to participate in the March 10, 2015 interested parties meeting. The deadline for interested parties to provide written responses regarding this discussion paper is March 25, 2015.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 02/24/2015

The underline and strikethrough text shows changes from the text proposed in staff's initial discussion paper. Because this is a new regulation, all of the proposed text will be underlined when the issue is presented to the Board.

Regulation 2002, *Feepayers, Retailers and Low-Volume Retailers*

(a) Definitions:

(1) Feepayer. A "Feepayer" is a person who purchases a qualified lumber product or an engineered wood product for storage, use, or other consumption in this state and is liable for the assessment until it has been paid to the Board of Equalization. The term also applies to retailers.

(2) Retailer. A "Retailer" has the same meaning as in Revenue and Taxation Code Section 6015. A retailer ~~shall~~ is required to charge a purchaser the lumber products assessment and to itemize the assessment as an amount that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) Low-Volume Retailer. A "Low-Volume Retailer" is a retailer whose sales of qualified lumber products or engineered wood products are less than \$25,000 during the previous calendar year. For purposes of meeting the threshold, retailers that have more than one location must include sales of qualified lumber products and engineered wood products from all locations when determining if the threshold is met.

(b) Section 4629.5 of the Public Resources Code imposes an assessment on a feepayer at the rate of one percent (.01) of the sales price. The feepayer is liable for the assessment until it is paid to the state. The payment of the assessment to a retailer relieves the feepayer from the lumber assessment liability. Any assessment collected from a feepayer that has not been remitted to the Board of Equalization shall be a debt owed to the state by the retailer.

(c) Beginning January 1, 2015, a low-volume retailer is not considered a retailer for purposes of this section and is therefore not required to collect or remit the lumber products assessment.

However, ~~they shall~~ the low-volume retailer must provide notice to purchasers (feepayers) of the purchasers's responsibility for payment of the assessment to the Board of Equalization.

A retailer in operation for less than a year and whose sales of qualified lumber products and engineered wood products is less than \$25,000 in that calendar year will be considered a low-volume retailer.

A low-volume retailer must maintain records of their annual sales of qualified lumber products and engineered wood products to determine if ~~they~~ their total sales remain below ~~continue to fall under~~ the \$25,000 threshold.